



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/169032

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 29, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the St. Croix County Health & Human Services in regard to Medical Assistance, a hearing was held on November 18, 2015, at New Richmond, Wisconsin.

The issue for determination is whether a draw that the petitioner takes from her husband's business is additional family income that makes their child ineligible for BadgerCare Plus.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
St. Croix County Health & Human Services  
1752 Dorset Lane  
New Richmond, WI 54017-1063

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.
2. The petitioner's husband owns a business. In the last year, she has taken draws from the business. The business has not deducted these draws from the income it reports to the Internal Revenue Service.

3. The county agency counted the petitioner's draw as additional income.
4. The county agency determined that the draws taken by the petitioner raised her household's income above the limit allowed for her child to receive BadgerCare Plus. The agency states that if the draws are not counted as income, her child remains eligible for BadgerCare Plus.
5. The petitioner's household income is less than 306% of the federal poverty level.

### **DISCUSSION**

BadgerCare Plus is Wisconsin's medical assistance program for those who are not elderly or disabled. Adults are ineligible if their household income exceeds the federal poverty level. Children under 19 are eligible until the household income exceeds 306% of the federal poverty level. Wis. Stat. § 49.471(4)(a); *BadgerCare Plus Handbook*, § 16.1. The county agency seeks to end benefits for the petitioner's child because it contends that her household income is too high.

All of the household's income comes from a business run by the petitioner's husband. The petitioner testified that she takes draws from that business to pay household bills. The county agency found that these draws were additional income because they were not made to the owner of the business. After adding these draws to the company's profits, it determined that the household income exceeded 306% of the federal poverty level. The petitioner contends that the draws did not create any additional household income and therefore should not be counted. The agency concedes that if the draws are not counted as income, the petitioner's child is eligible for BadgerCare Plus.

The agency points out that the company listed its wage payments to various people as a deductible expense, but it cannot tell from the tax return who these people were. As a result, it could not rule out that the petitioner was one of those paid wages. The petitioner contends that her draws are not deducted from profits when taxes are considered. The petitioner is credible, and I find that her draws were not a deductible expense of the company. Furthermore, rather than speculating that these draws could create additional income, the agency could have asked for additional verification to determine who was being paid by the company.

Because the draws were not a deductible expense, they did not create any additional household income. In a sense the money the household earned from the business is like a pot of water. If part of the money is poured into a separate container, it does not create any additional income because whatever will be gained by the second container will be lost from the first one. Likewise, any money the petitioner draws from the business will reduce profits available to her husband, the owner of the business. The only way this would not be true would be if the petitioner were an employee whose wages were considered deductible expenses of the business. In that case, the wages would reduce the amount of profit earned from the business, and the total household income would be the profits plus the wages. As noted, I relied upon the petitioner's testimony to find that this was not the case.

Because the petitioner's draws create no additional household income, that income remains within the BadgerCare Plus program's limit for children. Therefore, her child remains eligible for the program.

### **CONCLUSIONS OF LAW**

1. The draw the petitioner takes from her husband's business is not countable income when determining her child's eligibility for BadgerCare Plus.
2. The petitioner's child remains eligible for BadgerCare Plus because the household's income is within the program's limit.
- 3.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it find the petitioner's child eligible for BadgerCare Plus retroactive to the date it ended those benefits.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 2nd day of December, 2015

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\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 2, 2015.

St. Croix County Health & Human Services  
Division of Health Care Access and Accountability